IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4711 OF 1997

Dhanaji Laxman Tandel, .. Petitioner
Vs
State of Maharashtra & Ors .. Respondents

WITH

WRIT PETITION NO.4712 OF 1997

Shri Kathod Dharma Gavanda, .. Petitioner
Vs
State of Maharashtra & Ors .. Respondents

WITH

WRIT PETITION NO.4837 OF 1997

Shri Panga Mahadu Panchkudva .. Petitioner
Vs
State of Maharashtra & Ors .. Respondents

WITH

WRIT PETITION NO.4838 OF 1997

Smt Sita Babu Jadhav .. Petitioner
Vs
State of Maharashtra & Ors .. Respondents

WITH

WRIT PETITION NO.4839 OF 1997

Shidya Kakdya Bhoya .. Petitioner
Vs
State of Maharashtra & Ors .. Respondents

WITH

WRIT PETITION NO.4840 OF 1997

Smt Manki Bhiva Sapata .. Petitioner
Vs
State of Maharashtra & Ors .. Respondents

WITH

WRIT PETITION NO.4841 OF 1997

Sakharam Mahadu Choudhari .. Petitioner
Vs
State of Maharashtra & Ors .. Respondents

WITH

WRIT PETITION NO.4842 OF 1997

Shri Mithu Pagalu Vara .. Petitioner
Vs
State of Maharashtra & Ors .. Respondents

Shri Ashok T Gade h/f Shri V.A.Gangal, for petitioners.
Mrs. S.S.Bhende, AGP for respondent nos 1 to 5.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : APRIL 13, 2006.

PC:

1. All these petitions pray for similar relief, i.e. directions for allotment of land in survey no.143 of village Vehelondhe, Taluka Shahapur, District-Thane and consequent permission for felling of trees standing therein and removal of the material on the said land. The petitioners have also challenged the vires of sections 3 and 6 of the Sale of Trees by Occupants (belonging to Scheduled Tribe) Act, 1969.

2. These petitions came to be allowed at the admission stage itself in terms of Minutes of Order dated 17.10.1997, which were signed by the learned Advocate for the petitioners on one hand and the learned AGP on the other. Obviously, no affidavit-in-reply was filed by the State Government nor was there any indication that the

learned AGP was under instructions by the competent authority to give consent to and accept the Minutes of Order. The State Government therefore, in its wisdom, challenged the order dated 17.10.1997 in Civil Appeal Nos 3238 of 1998 to 3242 of 1998, Civil Appeal Nos.3244 of 1998 to 3246 of 1998. All these Appeals came to be decided by the Apex Court by common order dated 13.7.1998. The said order reads as under :-

> "Leave granted. From the impugned order of the High Court, we find that no affidavit in reply had been filed by the appellants herein and the High Court proceeded on the assumption that the land in survey no.143 belonged to the respondents and, therefore, they were entitled to the benefits of the felling of the trees on that land.
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> In the present appeals it is the case of the appellants that the respondents were cultivating the land in survey no.144 and that they had no right on the land in survey no.143. This is essentially a question of fact which could not have been decided without an affidavit having been filed before the High Court. It will be essentially for the High Court to go into the correctness of the rival contentions on this aspect. We, therefore, allow the appeals, set aside the impugned judgments and restore the writ petitions on the file of the

> High Court with a direction that the appellants herein will file their affidavits in reply within 10 weeks from today and the petitions be taken up for hearing thereafter. The High Court will decided the case on merits without being influenced by the order passed herein."

The State Government has, through the Deputy Conservator of Forests, Shahapur Division, Shahapur, filed an affidavit in reply on or about 21.9.1998 and this court by an order dated 29.1.1999 condoned the delay in filing the affidavits in reply in all the companion group of writ petitions and the petitions were listed as part-heard. During the last about seven years the petitions could not see the light of the day for being heard afresh and they reached for hearing before us yesterday in the first half when the learned counsel for the petitioners was not present before us. In the second half they were mentioned as the learned counsel was pre-occupied. We, therefore, listed the petitions for hearing today and again a request was made to adjourn the petitions for two weeks. We have turned down the request and proceeded to decide the petitions on merits.

3. In the affidavit in reply it has been now clarified by the State Government that when the land was allotted to the petitioners as per the Government Circular dated 5.1.1970 (Exhibit-A to the petition memo) the survey

number of the land was wrongly mentioned as survey no.143 and the correct survey number ought to have been mentioned as survey no.144. The petitioners being Adivasis (Scheduled Tribes) they were entitled for allotment of land as per the Government policy and,therefore, such benefit was granted in their favour by the order dated 17.8.1970. It has been further clarified that as per the survey made by the Taluka Inspector of Land Records and Forest Department on 25.4.1995 a report was submitted to the Collector, Thane in respect of the lands in survey nos 142, 143 (Pt) and 144 (Pt.). A copy of the said report has been annexed to the affidavit in reply and it has been stated that the survey was made in the presence of the plot holders including the present petitioners and in presence of the representatives of the Forest Departments and Circle Officers at Shahapur. As per the said report and the survey map, the land in survey no.143 (Pt) is a protected forest land which could not have been allotted to any persons including the persons from the scheduled Tribe category under the government policy and, therefore, the petitioners were to be allotted the land from survey no.144(Pt). The survey map shows that the petitioners and similarly placed persons constructed pucca houses on the part of land allotted to them and in survey no.144. Thus, inspite of the allotment order dated 17.8.1970 mentioning the land as survey no.143 what was allotted to the

petitioners was the land in survey no.144 (Pt) and the affidavit clearly states that part of the land has been used for construction of houses and part of the land is being cultivated. The survey report supports this contention. The clerical error made in the order passed on 17.8.1970 in writing the survey number obviously gave rise to this batch of petitions and the petitioners claim raised from time to time demanding allotment of land or its handing over from survey no.143 which is a reserved forest. In support of the affidavit in reply, the State Government has also relied upon the panchnama which was made at the time of undertaking the survey and it is clear from the same that the petitioners are in actual possession of survey no.144 and the statements of various cultivators and their relations were also recorded which again go to show that the petitioners were cultivating the land in survey no.144.The affidavit further points out that in 7/12 extracts maintained by the Talathi the names of the petitioners were shown in respect of the land in survey no.143 but actually they were cultivating and were in possession of the land located in survey no.144 (Pt). Obviously the entries made by the Talathi were based on the order dated 17.8.1970 which had the clerical error of writing survey no.143 instead of survey no.144.

4. The government affidavit further clarifies that the trees standing on the land in survey no.143 are very old

trees and in fact more than 50 years of age and they cannot be allowed to be cut/uprooted. The forest in survey no.143(Pt) is required to be protected and there is no question of granting any permission to fell the trees from the said land. On any count the petitioners claim, namely allotment of land from survey no.143 or permission to fell the trees standing on the land in survey no.143(Pt), cannot be entertained.

5. As the petitioners are seeking permission for felling the trees standing on the land in survey no.143(Pt) which is a forest land, we need not examine the challenge raised to the constitutional validity of sections 3 and 6 of the Sale of Trees by Occupants (Belonging to Scheduled Tribe) Act, 1969 and more so by the order dated 17.8.1970 the petitioners were not allotted the land in survey no.143 but they were allotted the land in survey no.144 and they are in actual possession of the land in survey no.144.

6. In the premises, these petitions are dismissed. Rule discharged, but without any order as to costs.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**